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THE ENFORCEMENT OF DECREES IN EQUITY (Harvard Studies in Jurisprudence I). By Charles A. Huston, Professor of Law in Stanford University. Cambridge: Harvard University Press, 1915.

Although the author of this delightful essay wrote it "primarily to advocate an enlargement of the equity powers of American courts which will enable them to give real effect to their decrees; for example, to transfer title directly instead of ordering a litigant to make the transfer," nevertheless the burden of his plea seems to be to disprove Coke's famous *dictum* and to prove that equitable rights are really rights *in rem*.

The author very clearly shows the need of giving equity courts the power to enforce their decrees directly, and not dependent upon the obedience of the defendant. As the power to punish for contempt is being gradually curtailed, it is quite imperative for the just administration of law for the court which decrees that the defendant shall convey certain land to the plaintiff, to have the power by rendering its decree to transfer directly the title involved. This power can only be given by statute and the various types of statutes are explained. Most of the states have conferred this power upon their courts but Congress has never done so. This he urges Congress to do in order that the extremely doubtful question as to whether the federal courts can avail themselves of such state provisions will be removed. He next traces the development of the enforcement of such decrees in the civil law from compensation to restitution and prevention.

In Chapter IV the author cites several examples of the failure of the law for no other reason than as the defendant was without the jurisdiction equity could not grant the plaintiff adequate relief, although the subject of the controversy was before the court. He cites for his examples cases of removal of faulty trustees, conveyances of land under a binding contract, removal of a cloud upon title, equitable remedy of interpleader. His argument is clear and convincing.

From Chapter V on, the author traverses that well worn ground of equitable rights. His apology for leading again the legal readers over ground so well covered by Maitland and Lewin is that their conclusions are opposed to his. He attempts to show (and for that matter very clearly) that a *cestui que trust* has certain equitable interests which are not rights *in personam*, but rights *in rem*. He denies that a trust is only a confidence reposed in the trustee, but an association quite analogous to that of agency. His conclusion is that the *cestui que trust* "is the real owner and the trustee merely the depository of the legal title."

While the average lawyer trained with the idea that the trustee was the all important factor in the relationship, will regard the conclusion of Professor Huston with some degree of suspicion, nevertheless he will not fail to see that there are two sides to the question. In fact this is one of the most interesting, instructive and clearly thought out essays which has appeared for some time. Only in his statement and explanation of the case of *Cave v. Cave* (pp. 145-146) does the author fail to be clear.

There is an appendix of the various statutes giving equity courts clear power in certain cases to enforce their decrees directly, thus obviating the necessity of waiting until the defendant either decides to obey or to come within the jurisdiction. The index is too meager to be useful.

Douglass D. Storey.

THE CRIMINAL IMBECILE. By Henry Goddard, Director of Department of Research, Vineland (New Jersey) Training School. Pp. ix and 157. New York: The MacMillan Company, 1915.

This small but very readable volume contains an analysis by a psychological expert of three recent murder trials in three different states,—New

York, Pennsylvania and Washington. These cases are remarkable for the reason that they are the first in which the results of the Binet tests of the intelligence of the defendant were introduced in evidence. In each case the prisoner was of sufficient physical age to be legally responsible. In none of the cases could the defendant be said to be insane, but in each case, according to the results of the Binet tests, the defendant was a high grade imbecile or "moron" with the mentality of a child between the ages of seven and twelve years. In each case Mr. Goddard concludes that the reasonable probability was that the defendant because of mental disease, was unable to distinguish between right and wrong with reference to the act and unable to recognize the nature and the quality of his act. In other words, the contention is that these defendants of responsible age were mentally but immature children and as such irresponsible; fit subjects for a home for the feeble minded, but not for punishment. It is interesting to note that only in the New York case did the jury accept the defence's contention and acquit, although this may have been due to a failure to make the matter sufficiently clear.

The appendix contains the hypothetical questions propounded by both defense and prosecution and the points for charge in the New York case.

In this volume the author is blazing the way for the practical use by our courts of law of the knowledge gained by psychologists in the field of higher imbecility. The criminal bench and bar could profit were they to familiarize themselves with the author's "Feeble-mindedness: Its Cause and Consequences" as well as with the work under discussion.

P. N. S.